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C O N F I D E N T I A L SECTION 01 OF 03 BERLIN 000970

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SUBJECT: NEW GERMAN RULES OF ENGAGEMENT WIDEN LATITUDE TO
USE MILITARY FORCE IN AFGHANISTAN

REF: BERLIN 835

Classified By: ACTING POLITICAL MINISTER COUNSELOR STAN OTTO. REASONS:
1.4 (B) AND (D).

¶1. (C/NF) SUMMARY. While the German MOD is playing down recent changes to the rules-of-engagement (ROE) "pocket card" that is issued to all German soldiers in Afghanistan, those changes, in fact, are fairly substantive and significant. While the previous card clearly viewed the use of force as the exception rather than the rule, the new one acknowledges it as a normal part of the deployment and necessary to fulfill the mission of supporting the Afghan National Security Forces. As one well-respected German defense journalist has put it, the changes in the pocket card are long overdue in view of the much deteriorated security situation in the north, especially around Kunduz. END SUMMARY.

PLAYING DOWN THE CHANGES

¶2. (C) As previewed reftel, the German Ministry of Defense has developed and issued a revised "pocket card" (Taschenkarte) to German soldiers in Afghanistan, which outlines the rules regarding the use of military force in Afghanistan (see full text of the new pocket card at para 8). MOD officials insist to us that the revised card does not expand the authorization to use force and that the old version allowed German soldiers to do "everything necessary" to carry out their assigned missions. However, these officials admit that by significantly simplifying and shortening the "card" -- reducing it from 7 pages to just over 2 pages -- and by removing many confusing caveats and ambiguities, they have clarified the circumstances under which German soldiers can use force. They concede that the old card might have made some soldiers feel unnecessarily constrained or insecure in using force when, in fact, it was justified. MOD said it was motivated to make the changes given the deteriorating security situation in the north, which now requires the regular resort to force.

EXCEPTION BECOMES THE RULE

¶3. (C) Nonetheless, when one compares the old and new pocket cards, it becomes clear that this was not just a routine revision. There are substantive differences, especially in tone and approach. While the old card clearly viewed the use of force as the exception rather than the rule ("military force is only to be used when it is appropriate and necessary"), the new one acknowledges it as a normal part of the deployment ("to fulfill the mandate (of supporting

Afghanistan in maintaining security), you may use proportional military force, including firearms"). The first thing addressed in the old card was the use of force in self-defense, implying that this was the primary purpose. By contrast, the new card focuses on the use of force to accomplish the mission.

REVERSAL OF THE BURDEN OF PROOF

¶4. (C) The old card set high thresholds for the use of firearms: "the use of firearms against individuals is only permissible when the use of milder means does not promise success" and "should not go beyond what is necessary for effective defense or fulfillment of the mission." Those thresholds have been eliminated and replaced with the instruction that "it is not necessary to choose a possible milder option if this would expose you or other deployed forces to considerable danger to life and limb."

¶5. (C) The burden of proof on the use of firearms against fleeing attackers has been reversed. Before, it was "prohibited" to use firearms against those who had desisted from an attack; now, German troops can continue to treat such persons as hostile "if it cannot be ruled out" that they "will continue or resume attacks" in the near future. The old card insisted that soldiers, before using firearms against an individual, should give two verbal warnings to stop, followed by a warning shot. The new card eliminates the need for a second verbal warning and says the firing of a warning shot is a permissible alternative.

LONG-RANGE WEAPONS NOW ALLOWED

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¶6. (C) The old card effectively ruled out the use of mortars, snipers and other long-range weapons by specifying that "the immediate use of firearms without a prior warning is only justified when that is the only means to defend against an immediate threat to life and limb." That restriction has been dropped from the new card.

COMMENT

¶7. (C/NF) The MOD seeks to play down the significance of the changes in the pocket card, for fear of opening itself up to criticism that the old rules of engagement put German soldiers at risk or arousing concerns about a military escalation of the German engagement. But as a prominent and widely respected German defense journalist has commented, the new pocket card is "a clear improvement" and not a simple routine revision of the old one. After first buying the MOD line that the old card allowed "everything necessary," this journalist notes that "the more we heard about responsible commanders on the ground who, apparently because of the pocket card, prohibited possible action against the people responsible for launching rockets against PRT Kunduz, the greater my conviction that this was really necessary" and "should have been done earlier."

TEXT OF NEW POCKET CARD

¶8. (SBU) Unofficial English translation of Bundeswehr "pocket card" specifying the rules for the use of military force by German soldiers under ISAF in Afghanistan:

BEGIN TEXT

Ministry of Defense
For Official Use Only

Pocket Card for the Soldiers of the German ISAF contingent in Afghanistan

Rules for the Use of Military Force

¶I. Mandate

You support Afghanistan in maintaining security, that is to say you help provide a safe environment for the Afghan state organs and for United Nations staff and other international civilian personnel, in particular those working on reconstruction and humanitarian tasks.

II. Principles Governing the Use of Military Force

To fulfill this mandate (I.), following an assessment of the local situation, you may use proportional military force, including firearms. In doing so, the following principles must be respected:

¶1. Military force must be proportional. It may only be used if it is appropriate and necessary. It is not necessary to choose a possible milder option if this would expose you or other deployed forces to considerable danger to life and limb. The foreseeable consequences must not be disproportional to the objective.

¶2. Use of firearms or of other means for which danger to life or grave physical harm of non-involved persons cannot be ruled out is only permitted if immediate danger to life and limb cannot otherwise be averted.

¶3. Circumstances permitting, you must announce that you will use military force. To do this, you must declare loudly, in English:

"ISAF - STOP, or I will fire!"

The firing of a warning shot is a permissible alternative.

III. Specific Powers

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To fulfill the mandate (I.), you may take and enforce measures with military means, while observing the above-mentioned principles (II.).

In particular, you are allowed to take the following measures:

¶1. Issue instructions to persons (re-routing, putting down arms and objects),

¶2. Forbid persons to enter or stay in facilities, buildings, places or special zones;

¶3. Stop, disarm and search persons.

Your superior must be informed immediately thereafter. The local military commander will decide whether the person concerned will be arrested or set free, or if a decision will be obtained from the competent authorities;

¶4. Prevent the escape of persons who are to be arrested, were arrested or are in custody;

¶5. Person and vehicle checks, including searches;

¶6. Search buildings and other facilities and objects;

¶7. Confiscate, make unusable or destroy objects which pose a danger to persons, facilities, material or the fulfillment of your mandate;

¶8. Prevent and counter attacks directed against

- a) military and civilian ISAF and NATO personnel,
- b) ISAF and NATO facilities and material,
- c) Persons who, according to the command situation, are

under special ISAF protection (e.g. ANA, ANP).

Attacks can for instance be prevented by taking action against persons planning, preparing or supporting attacks or showing a hostile attitude. A hostile attitude persists if it cannot be ruled out that persons who have attacked ISAF will continue or resume attacks in the proximity in the near future. Military force aimed at preventing attacks may only be used by order of the local military commander.

IV. Self-Defense and Emergency Assistance

¶1. None of the above-mentioned regulations limits your right to self-defense.

¶2. You may at all times ward off attacks on military and civilian ISAF and NATO personnel as well as their facilities and material, and on other persons, in line with the relevant command situation (extended self-defense).

¶3. As emergency assistance, you may ward off any life-threatening attacks or attacks that aim to do grave physical harm or to deprive persons of their liberty.

¶4. Provision of extended self-defense and emergency assistance may be limited by the local commander, should the military situation so require.

END TEXT

Bradtke